

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>CONNECT AMERICA FUND</b>	)	<b>WC Docket No. 10-90</b>
	)	
<b>A NATIONAL BROADBAND PLAN FOR OUR FUTURE</b>	)	<b>GN Docket No. 09-51</b>
	)	
<b>ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS</b>	)	<b>WC Docket No. 07-135</b>
	)	
<b>HIGH-COST UNIVERSAL SERVICE SUPPORT</b>	)	<b>WC Docket No. 05-337</b>
	)	
<b>DEVELOPING A UNIFIED INTERCARRIER COMPENSATION REGIME</b>	)	<b>CC Docket No. 01-92</b>
	)	
<b>FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE</b>	)	<b>CC Docket No. 96-45</b>
	)	
<b>LIFELINE AND LINK-UP</b>	)	<b>WC Docket No. 03-109</b>
	)	
<b>UNIVERSAL SERVICE REFORM – MOBILITY FUND</b>	)	<b>WT Docket No. 10-208</b>

**COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS  
ALLIANCE IN SUPPORT OF CENTURYLINK PETITION FOR WAIVER**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in support of the Petition for Waiver filed by CenturyLink on June 26, 2012 in the above-captioned proceedings.<sup>1</sup> CenturyLink seeks authority to use Connect America Fund (“CAF”) Phase I funds to deploy broadband to areas that the National Broadband Map (“NBM”) inaccurately identifies as served by certain Wireless Internet Service Providers (“WISPs”). Specifically, CenturyLink wishes to use CAF Phase I funding to deploy broadband service to areas on the map that are purportedly served by a WISP, but where CenturyLink’s data indicates

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<sup>1</sup> CenturyLink Petition for Waiver, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208 (filed June 26, 2012) (“CenturyLink Petition”).

that service is not available or that such service is inadequate because it shares similar characteristics to satellite broadband service (e.g., capacity constraints, line-of sight-restrictions, data caps, or other limitations).<sup>2</sup>

ITTA believes that a waiver that would enable CenturyLink to offer service in these communities would serve the public interest and facilitate the Commission's goals of ensuring rapid deployment of robust and affordable broadband service to tens of thousands of rural consumers that lack access to such service today. The Commission should grant CenturyLink's petition without further delay.

### **DISCUSSION**

Under the Commission's rules, a waiver is "appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest."<sup>3</sup> Not only are special circumstances involved here, but grant of the instant waiver request also would undoubtedly serve the public interest by providing broadband service to Americans who might not otherwise have access to such service or where such service is significantly inferior to the robust, reliable, and affordable wireline broadband service that CenturyLink would be able to offer if the waiver is granted.

With respect to the first prong of the two-part test, special circumstances arise from the Commission's reliance on the NBM as the basis for determining whether an area is unserved and thus eligible to receive CAF Phase I funding. Price cap incumbent local exchange carriers ("ILECs") may spend CAF Phase I funds to deploy broadband networks only to areas that are

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<sup>2</sup> The Commission has concluded that areas served by satellite broadband providers are to be considered "unserved" for purposes of CAF Phase I. See *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 104 (rel. Nov. 18, 2011) ("*USF/ICC Reform Order*").

<sup>3</sup> *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, et al.*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, ¶ 88, n. 256 (2007); see generally 47 C.F.R. § 1.3.

not currently served by a fixed broadband provider with a minimum service speed of 768/200 kbps, as reflected on the NBM.<sup>4</sup>

However, the NBM grossly overstates the availability of service from WISPs by showing ubiquitous coverage that is facially implausible given line-of-sight restrictions and other objective criteria. The primary reason WISP service areas are so obviously overinflated on the NBM is because a number of states lacked the resources to independently verify the data provided by the WISPs, whose self-interest was advanced by exaggerating their service capabilities.<sup>5</sup> CenturyLink has provided examples of situations in six different states where nearly 30,000 living units would likely be deprived of CAF Phase I funding because they remain unserved despite the information shown on the NBM.<sup>6</sup> The Commission and other regulators have acknowledged that the NBM is merely a “best-efforts snapshot”<sup>7</sup> that “is not completely accurate.”<sup>8</sup>

Moreover, even where WISP service may be available, as reflected on the NBM, in many cases such service shares limitations with satellite broadband service that result in greatly diminished quality, reliability, and affordability of service for affected consumers.

Thus, we are left with a situation where rigid adherence to the data reflected on the NBM threatens the very purpose of the CAF Phase I grant of \$300 million to price cap carriers to “expand voice and broadband availability as much and as quickly as possible” and help “close[e]

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<sup>4</sup> See 47 C.F.R. § 54.312(b) (stating that CAF Phase I recipients must deploy broadband service to locations “shown as unserved by fixed broadband on the then-current version of the National Broadband Map”); see *USF/ICC Reform Order* at ¶ 146 (providing that the service that precludes a census block from eligibility must have a “minimum speed of 768 kbps downstream and 200 kbps upstream”).

<sup>5</sup> See CenturyLink Petition at 5.

<sup>6</sup> *Id.* at 5-6.

<sup>7</sup> See <http://www.broadbandmap.gov/about>.

<sup>8</sup> *USF/ICC Reform Order* at n. 231.

the rural-rural divide” for consumers in areas of the country who need it most.<sup>9</sup> Such a result cannot be squared with Commission’s priority “to immediately start to accelerate broadband deployment to unserved areas across America” while it designs and implements the long-term CAF Phase II distribution methodology.<sup>10</sup>

As for the second prong of the two-part test, providing the relief requested would serve the public interest for a multitude of reasons, chiefly because it furthers the very purpose of CAF Phase I and is narrowly tailored to avoid concerns regarding administrative ease and efficiency that might arise as a result of a broader request.

One of the Commission’s most important objectives in recent years has been to facilitate universal broadband access and adoption for all Americans, particularly for consumers in rural areas such as those where CenturyLink provides service.<sup>11</sup> Access to robust broadband service is “crucial to our nation’s economic growth, global competitiveness, and civic life. Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education.”<sup>12</sup> Indeed, the job opportunities broadband access makes available “are critical to our nation’s economic recovery and long term economic health, particularly in small towns... [and] rural and insular areas.”<sup>13</sup>

Given the importance of the goal of universal broadband access, no policy basis exists to deny the relief requested by CenturyLink when it would help achieve the basic objective of the CAF Phase I program. In fact, denial of the petition would “suppress investment, perpetuate the

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<sup>9</sup> *USF/ICC Reform Order* at ¶¶ 21-22, 128 n. 201, 145. As the Commission noted in the *USF/ICC Reform Order*, “[m]ore than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas.” *Id.* at ¶ 127.

<sup>10</sup> *Id.* at ¶ 132.

<sup>11</sup> *See id.* at ¶ 5.

<sup>12</sup> *Id.* at ¶ 3 (internal citations omitted).

<sup>13</sup> *Id.*

rural-rural divide, and subvert the Commission’s wider broadband deployment initiatives.”<sup>14</sup> Most importantly, it “would deprive tens of thousands of households” and “consumers across large swaths of states like Arizona, Colorado, Oregon, and Washington” where CenturyLink is poised to build-out network infrastructure the opportunity to subscribe to quality, affordable broadband services.<sup>15</sup>

Because CenturyLink serves the largest number of high-cost wire centers, it is entitled to approximately 30 percent of the overall CAF Phase I budget.<sup>16</sup> According to its calculations, this potentially would enable CenturyLink to offer service to more than 116,000 unserved locations.<sup>17</sup> However, because of the requirement that every provider must serve at least one otherwise unserved location for every \$775 it receives,<sup>18</sup> CenturyLink could accept funding to serve only a small fraction of those 116,000 locations if it cannot spend CAF I funds to deploy broadband to the areas nominally served by the WISPs that are the subject of its petition.<sup>19</sup>

If the waiver is granted, CenturyLink expects to take an additional amount of approximately \$32.6 million in CAF Phase I funding, which equates to an obligation to serve around 42,000 additional living units.<sup>20</sup> These living units would otherwise have no access to broadband or would have service that faces capacity restraints and other restrictions that would make it much more expensive and much lower quality than what CenturyLink seeks to offer.

Thus, grant of the requested relief would be significant in achieving the Commission’s aims to

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<sup>14</sup> CenturyLink Petition at 3.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> “Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support,” WC Docket Nos. 10-90, 05-337, Public Notice, DA 12-639, ¶ 9 (rel. Apr. 25, 2012).

<sup>17</sup> CenturyLink Petition at 3.

<sup>18</sup> *USF/ICC Reform Order* at ¶ 22.

<sup>19</sup> CenturyLink Petition at 3.

<sup>20</sup> *Id.* at 16.

“spur immediate broadband buildout” to American consumers and to close the rural-rural divide by enabling “price cap carriers to extend robust scalable broadband to hundreds of thousands of unserved Americans beginning in early 2012.”<sup>21</sup>

CenturyLink’s waiver request is narrowly confined to include only those areas served by WISPs where (1) states have not independently verified WISP coverage as stated on the NBM and objective indicia demonstrate that the WISP could not plausibly serve the areas that the NBM shows it to cover, or (2) the WISP imposes unusually high retail prices (\$720 or more for the first year of service) or unusually stringent data caps (25 GB per month or below), that make it akin to satellite broadband service that the Commission has determined is insufficient. Rather than a much broader waiver request, CenturyLink has limited its petition to the WISPs “with the most palpably unreasonable coverage depictions” and those “whose services most obviously fall short of the wireline service that CenturyLink seeks to provide.”<sup>22</sup> In so doing, CenturyLink’s petition directly addresses the administrative concerns that led the Commission to deny ITTA’s request for much broader relief with respect to the distribution of CAF Phase I funds to areas that are not fully served by WISPs.<sup>23</sup>

It cannot be emphasized enough that “[t]he Commission’s decision on this waiver request will... determine whether tens of thousands of geographically remote American households will, or will not, have fast and dependable broadband Internet access at affordable prices.”<sup>24</sup> In today’s economy, access to broadband means access to jobs and economic opportunity, in addition to better education and healthcare. And for all Americans, particularly consumers in the

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<sup>21</sup> *USF/ICC Reform Order* at ¶ 22.

<sup>22</sup> *Id.* at 2, 6.

<sup>23</sup> *See id.* at n. 13.

<sup>24</sup> *Id.* at 16.

most rural areas of the country, broadband access means “a better way of life.”<sup>25</sup> Granting CenturyLink’s request will allow it to make broadband a reality for tens of thousands of households while furthering the Commission’s mission to ensure that all Americans are served by high-speed Internet access where they live, work, and travel.

### **CONCLUSION**

For all of the foregoing reasons, the Commission should expeditiously grant CenturyLink’s Petition for Waiver.

Respectfully submitted,

By: /s/ Genevieve Morelli

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<sup>25</sup> Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xi (rel. Mar. 16 2010).